

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-158654 AND ALL OTHER
SEAMAN'S DOCUMENTS

Issued to: Edward BALTHROP

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1828

Edward BALTHROP

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 3 July 1969, an Examiner of the United States Coast Guard at New York, N. Y., suspended Appellant's seaman's documents for one month outright plus three months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleged that while serving as chief cook on board SS PIONEER MING under authority of the document above captioned, on or about 6 November 1968, Appellant assaulted and battered one Eng Siu Po, chief steward of the vessel by striking him in the mouth two times with his fist, thereby causing bleeding at the mouth and loosened teeth.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and certain documents.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of one month outright plus three months on eighteen months' probation.

The entire decision was served on 29 July 1969. Appeal was timely filed. Although Appellant had until 8 December 1969 to perfect his appeal nothing has been added to the statement in the original notice.

FINDINGS OF FACT

ON 6 November 1968, Appellant was serving as chief cook on board SS PIONEER MING and acting under authority of his document while the ship was in the port of New York.

On the date in question, Appellant was working in the galley, across the passageway from the butcher shop. From time to time, Appellant went into and came out of the butcher shop. Stores were being loaded on the ship at this time.

The Chief Steward told Appellant to stand by the stores because meat was coming aboard. Appellant then struck the Chief Steward twice with his right fist, causing a swelling of the mouth and loosened teeth.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision is against the weight of the evidence and that the order is too severe.

APPEARANCE: Abraham E. Freedman, New York, N. Y., by Martin M. Katz, Esq.

OPINION

I

I have repeatedly held that a statement that an examiner's decision is against the weight of the evidence is not a sufficient statement of grounds for appeal unless it specifies the particular deficiencies which form the basis of the appeal. This appeal does not specify the grounds. Nevertheless, Appellant's petition has been considered and construed as urging that the Examiner's decision in this case is not supported by substantial evidence of a reliable and probative character.

The Examiner clearly rejected Appellant's testimony and accepted that of the victim of the battery and of the chief officer to whom the victim reported for treatment. The evidence accepted is not so inherently incredible that it must be said as a matter of law that the Examiner erred in according it weight.

The findings are not to be disturbed.

II

It is asserted that the order is excessive in view of Appellant's prior clear record. It is obviously only because of Appellant's record that the order was as lenient as it was,

considering the Examiner was dealing with an unprovoked assault and battery which caused physical injury to the victim.

CONCLUSION

The evidentiary findings of the Examiner that the Chief Steward's mouth was swollen by the blows struck do not support his ultimate finding that the mouth was caused to bleed as alleged.

ORDER

The ultimate findings of the Examiner are MODIFIED so as to delete that part which held that there was bleeding from the Chief Steward's mouth. As MODIFIED, the findings and order of the Examiner entered at New York, N. Y., on 3 July 1969 is AFFIRMED.

C. R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D. C., this 1st day of December 1970.

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